

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY

3 NXIVM CORPORATION, et al., .
4 Plaintiffs, . Case No. 2:06-cv-01051
5 vs. . Newark, New Jersey
6 ROSS INSTITUTE, et al., . February 9, 2011
7 Defendants. . Volume 1
8 .

9 TRANSCRIPT OF HEARING
10 BEFORE THE HONORABLE MARK FALK
11 UNITED STATES MAGISTRATE JUDGE

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1 (Commencement of proceedings at 10:24 a.m.)

2

3 THE COURT: Good morning. Welcome to all.

4 UNIDENTIFIED SPEAKERS: Good morning, Your Honor.

5 THE COURT: Mr. McGuire, how are you feeling? I
6 see you have a sling on.

7 MR. McGUIRE: Well, a lot better now that I believe
8 there's no break.

9 THE COURT: Good.

10 MR. McGUIRE: The MRI's being interpreted this
11 morning.

12 THE COURT: You slipped on the ice?

13 MR. McGUIRE: Yes, sir.

14 THE COURT: Very bad. You can remain seated,
15 then --

16 MR. McGUIRE: Thank you, sir.

17 THE COURT: -- to extent you want.

18 All right, folks, this is the case of NXIVM
19 Corporation v. Ross, et al. It's Docket 06-01051. And at
20 this time, I would appreciate it if counsel would place their
21 appearances on the record.

22 MR. McGUIRE: William McGuire, Tompkins McGuire
23 Wachenfeld & Barry for the NXIVM and Nancy Salzman
24 plaintiffs.

25 MR. CROCKETT: Robert Crockett and with me, behind

1 me are John Falzone and Joan Karn of Latham & Watkins
2 representing Kristin Keeffe.

3 MR. LEONARD: Good morning, Your Honor, Robert
4 Leonard, Drinker Biddle & Reath for Keith Raniere.

5 MR. SYLVESTER: Good morning, Your Honor, Anthony
6 Sylvester from Riker Danzig. Mr. Kofman from my office is
7 here as well. And we're here on behalf of Mr. Sutton,
8 Mrs. Sutton, and Stephanie Franco. Thank you.

9 MR. SKOLNIK: Good morning, Your Honor, Peter
10 Skolnik and Tom Dolan from Lowenstein Sandler, on behalf of
11 Rick Ross, the Ross Institute, the late Paul Martin, and the
12 Wellspring Retreat.

13 THE COURT: Good morning.

14 MR. PIKUS: Good morning, Your Honor, David Pikus
15 from Bressler, Amery & Ross, P.C. I represent a non-party
16 witness Lesley, L-e-s-l-e-y, Kassin K-a-s-s-i-n.

17 THE COURT: And you sent a letter asking permission
18 to attend today.

19 MR. PIKUS: Yes, Your Honor, and I thank you for
20 doing that.

21 THE COURT: Said that that would be fine. So I had
22 my -- someone from my office call you and say that.

23 MR. PIKUS: Yes, and I thank you for that.

24 MR. LANDY: Good morning, Your Honor, Robert Landy
25 and Benjamin Holzer Friedman, Kaplan, Seiler & Adelman on

1 behalf of Interfor and Juval Aviv.

2 THE COURT: All right. Well -- oh.

3 MS. BOUCHEY: Sorry. I'm Barbara Bouchey, a
4 non-party witness representing myself, and I didn't know to
5 ask permission.

6 THE COURT: That's fine. Your -- you're
7 absolutely -- it's an open proceeding, first of all, but
8 you're also entitled to be here.

9 MS. BOUCHEY: Thank you.

10 THE COURT: And we're happy to have you. You're
11 not represented by any counsel; is that true?

12 MS. BOUCHEY: No, by myself.

13 THE COURT: By yourself.

14 All right. I believe we have much -- much to do,
15 it would seem to me, in an extraordinarily lengthy, complex
16 and difficult case, a case that's been pending since 2006.

17 I scheduled a case management conference for today.
18 The present close of fact discovery is March 1, 2011. And I
19 have received approximately 23 letters in advance of this
20 case management conference, some as recent as yesterday, some
21 hundred page- -- hundreds of pages long with exhibits,
22 raising what I think are about 11 or 12 disputes. There may
23 be other disputes; some of the letters indicated that the
24 time didn't allow to really put them in writing and that
25 things would be raised orally at the conference. I will do

1 my best to -- to work through them.

2 I guess before I get started, I do want to say that
3 I have been conferring regularly with Judge Cavanaugh, the
4 district judge, about the case. He is well aware of it --
5 well, maybe not every detail, but where it stands and the
6 timing factor. He is eager to, at this point, move the case
7 forward to a decision on the merits. So that's an
8 overarching consideration that we have, within reason. So I
9 wanted you to know that. I did confer with him before this
10 conference because I just think it has reached the point
11 where his input -- you know, it is his case -- is very
12 important.

13 So in terms of framework, I did receive a letter
14 from -- well, I got many letters. One of the more recent
15 letters from Mr. McGuire had a sort of proposed agenda. I
16 had made a list of disputes that were raised in the letters.
17 But I think what I'll do is turn to the plaintiff --
18 plaintiffs and allow the plaintiffs to raise the issues that
19 they have or they wish to raise. And then I'll turn to the
20 defendants and allow them to raise the issues they wish to
21 raise, and we'll discuss them, and I'll do my best to -- to
22 resolve them.

23 Okay.

24 MR. MCGUIRE: Thank you, Your Honor.

25 THE COURT: Sure.

1 MR. McGUIRE: Preliminarily, I'd just like to make
2 a couple of comments.

3 THE COURT: Okay.

4 MR. McGUIRE: And then we can address the various
5 issues.

6 THE COURT: Sure.

7 MR. McGUIRE: I was distressed to receive
8 Mr. Skolnik's -- one of his recent submissions to the Court,
9 which were accompanied by, I think 80- -- an 82-page document
10 representing what I think are called blogs, an awful lot of
11 them. And the reason for my distress, really, was perhaps
12 threefold. First of all, in my judgment -- and I think I'm
13 speaking now for Mr. Leonard, Mr. Crockett as well -- there's
14 no need for that exhibit to be attached. No need at all.
15 It's just another effort to disparage NXIVM and some of
16 its -- some persons associated with NXIVM. It was laced with
17 profanities, laced with profanities. They could have been
18 redacted. It's now a matter of public record.

19 And that gets me to the second point. It has
20 become apparent in this case that Mr. Skolnik and his client,
21 Mr. Ross, are endeavoring to try this case in the press.
22 There have been, as you can observe from the submission, that
23 82-page blog, statements made by people whom we'll never
24 know, anonymous, anonymous, anonymous, all the way through.
25 And what I'm fearful of, Judge, is that now that Mr. - -- and

1 Mr. Skolnik's tactic all the way through is to get something
2 in the public record, it's now in the public domain and
3 mention can be made of it anywhere. And now with this filing
4 in this court, I will not be surprised at all to see the
5 local press advised of this and see articles in the public
6 press which will be critical of NXIVM and persons associated
7 with it.

8 So I'm very concerned about that, and I think that
9 may be the sole basis for filing that with your -- with
10 Your Honor. And there'll be somebody, not Mr. Skolnik, not
11 Mr. Ross, but somebody will call the *Star Ledger* or the
12 *Bergen Record*, you might be interested in going down to read
13 something that's filed in the -- in the federal court. And
14 that's wrong. This case should be tried in a courtroom, not
15 in the press.

16 So that's the first thing.

17 THE COURT: I can -- can we -- can we -- I'd like
18 to deal with that, Mr. McGuire.

19 Perhaps -- do you want to say anything in response,
20 Mr. Skolnik? I'm not going to make a ruling on it, but I'm
21 going to make some comments; you're going to have to listen
22 to me on this subject. But go ahead. I don't know if you
23 have anything to say.

24 MR. SKOLNIK: Only, Your Honor, that the materials
25 that Mr. McGuire is referring to are also -- are already in

1 the public arena, that that's the very point of the fact that
 2 the blogger has placed these materials on the Internet.
 3 Anybody could already log onto that log. The anonymous
 4 postings are by people who are, in fact, anonymous. I have
 5 nothing to do with that. And I think that it is completely
 6 relevant to these proceedings that there be a -- a complete
 7 understanding of the issues that are going on that underlie
 8 why this case goes on and on and on.

9 One thing that Mr. McGuire did not say, other than
 10 the fact that some of the materials is scatological, as I
 11 pointed out in my letter, is he does not deny that any of it
 12 is true. I mean the fact is that these are materials that
 13 are already on the Internet. I'm not responsible for making
 14 them available in the public arena; they're already in the
 15 public arena.

16 And, Your Honor, I mean -- I -- I sense that
 17 you have, as you say, comments to make. I'll be happy to try
 18 to respond to those, if necessary.

19 THE COURT: Yeah. The -- yes --

20 MR. McGUIRE: May I just say --

21 THE COURT: Sure.

22 MR. McGUIRE: -- something briefly in response.

23 THE COURT: Sure, absolutely.

24 MR. McGUIRE: Mr. Skolnik just indicated that
 25 they're already in the public domain. Why put them in the

1 record in the District Court of New Jersey? There's no
2 reason to do that at all. None.

3 Secondly, it ties in with one of the issues that's
4 going to be brought before Your Honor today, dealing with the
5 press. Mr. Skolnik would love to have the press attend
6 depositions. And when he said that these articles are true,
7 if he means that they're -- they're already out on the
8 Internet through somebody's means, that's true, but the
9 contents are not true, and there's no way for us to fight
10 them because 90 or 95 percent of them are from people who
11 list themselves as "anonymous," who obviously have a bias
12 against NXIVM.

13 THE COURT: I appreciate it. I understand the
14 issue. And it's a particularly -- I think a serious one and
15 also a difficult one.

16 And although none of this was briefed before me in
17 any way and I'm not making a decision on it, in my role of
18 case management, I'm going to make some comments. And
19 frankly, the same year that this case was decided -- I'm
20 sorry, decided -- it was filed, 2006, I decided a case that
21 was also very much -- some of the same issues, not -- when I
22 say "the same issues," issues about the press being involved.
23 And I'm going to read you from some of what I said at that
24 time, just as a guide. The issue in that case was a party
25 was requesting a gag order to prevent another party, party

1 and lawyers from making comments, extrajudicial comments and
2 comments to the press. So I'm going to just read from that.
3 I'm doing that for a reason here, just to provide a
4 framework, and because I think it's important. And it also
5 frames the issue a little.

6 In that case, a party sought a gag order and
7 sanctions against a party for -- and the counsel for
8 extrajudicial statements. The standard is essentially good
9 cause under Sipilone [phonetic] and Pansy and Rossi v. State
10 of New Jersey. Burden to show good cause -- this is for the
11 gag order's on the moving party. And the court has to
12 analyze the cases on their facts on a case-by-case basis.
13 The basic standard for that type of a protective order is set
14 forth by the United States Supreme Court to some extent in
15 Gentile v. State Bar of Nevada, 501 U.S. 1030. And also in
16 this Circuit, in U.S.A. v. Scarfo, 263 F.3d 80. Some of
17 these cases may be dated. I just picked this out, something,
18 because I remember doing it. Basically holding that a
19 District Court may impose an appropriate gag order on parties
20 and their lawyers, and their lawyers, parties and their
21 lawyers, if it makes specific findings that extrajudicial
22 commentary would present a substantial likelihood of
23 prejudicing the Court's ability to conduct a fair trial. In
24 this Court's view that is a vigorous standard. But it does
25 take into account the constitutional implication. The right

1 to speech is not absolute for lawyers or their clients, as
2 set forth in Scarfo, and may be regulated under certain
3 circumstances to ensure a fair trial.

4 I cited the case of Constan [phonetic] v. Cosby at
5 2005 case, 2005 U.S. Dist. LEXIS 10856, where the court
6 addressed the problem. And I want you to hear it.

7 "It's difficult to strike a balance between
8 protecting the right to a fair trial and safeguarding the
9 right of free expression. On the one hand, it's true that a
10 lawyer's extrajudicial statements may contribute to the
11 public's understanding of the judicial process in general or
12 help explain the intricacies of a particular case. Yet, on
13 the other hand, extrajudicial statements by counsel heighten
14 the risk of turning litigation into a media circus, polluting
15 the jury pool, and lowering the esteem and dignity of the
16 court in the eyes of the public.

17 "Faced with this dilemma, some courts have entered
18 some form of gag order, limiting parties, counsel, and even
19 witnesses from publicly discussing the facts or merits of a
20 case. Given the First Amendment implications of a sweeping
21 gag order, however, limiting speech by parties and witnesses,
22 particularly in a civil case and particularly early in a
23 proceeding" -- in that case, it was early -- is -- "is rarely
24 taken. The court should not undertake to limit counselor's
25 extrajudicial statements without great care. The court must

1 be convinced, not merely suspect, that there is substantial
2 likelihood that extrajudicial statements by counsel, in light
3 of the circumstances of the case, will materially prejudice,
4 the pending proceedings.

5 "The Supreme Court has held that this 'substantial
6 likelihood of material prejudice' standard, constitutes a
7 constitutionally permissible balance between the First
8 Amendment rights of attorneys in pending cases and the
9 state's interest in fair trials, citing Gentile."

10 I also want to note -- and I did in that case --
11 that Local Rule 105.1, which is discussed in RPC 3.6, also
12 are implicated about extrajudicial statements having a
13 substantial likelihood of causing prejudice if it relates to
14 the character, credibility, reputation, or criminal record of
15 a party or a witness.

16 Judge Bassler decided a case, Kramer against Tribe,
17 in which he stated that using the media to publicize a case,
18 "must stop if the integrity of the judicial enterprise is to
19 be preserved." Intentionally publicizing a case is
20 "disruptive, wasteful, and inherently prejudicial. And it's
21 also a clear violation of the rules of professional conduct.

22 That's Judge Bassler.

23 In that case, there were articles in the *Wall*
24 *Street Journal*, *New York Post*, *Miami Herald*. In this case, I
25 know there have been articles in the press, et cetera.

1 And I want to finish by saying I'm making no ruling
2 here. In fact, it hasn't been presented to me except with
3 one issue, which I'm going to get right to.

4 But you've heard what I had to say. I take it very
5 seriously. I took it seriously then in a very high-profile
6 case. I've seen many articles in the press. And I
7 understand the arguments that Mr. McGuire has just made. And
8 you should all be guided accordingly on if there are specific
9 motions that are made before me, I will do my best to decide
10 them within the framework of the Constitution, the Supreme
11 Court authority, and the Third Circuit authority.

12 And I think that it is appropriate to flow right
13 into the one dispute, frankly, that -- which I don't know if
14 it's still a dispute, but at some point, apparently,
15 Mr. Skolnik you notified the other parties that you were
16 going to invite the press to future depositions. This was in
17 a letter from Mr. McGuire dated 12/22/10. I don't believe I
18 got a response to that letter. But is that still something
19 that is in dispute? Do you intend to do that?

20 MR. SKOLNIK: Well, Your Honor, it's in dispute to
21 the extent that I believe that the law firmly supports the
22 notion of the press attending depositions, particularly in a
23 case that has clearly attracted the interest of the media and
24 that has public policy implications.

25 It was Mr. Crockett, who in a telephone

1 conversation with Your Honor during another deposition, took
2 the position that depositions should be conducted as in open
3 court. In open court, the press would be entitled to attend.
4 The press has expressed a keen interest in the fact of the
5 case, and I have participated in several depositions where
6 the press were in attendance, particularly in high-profile
7 cases, and certainly Your Honor can rule that they should not
8 be participating, but on the other hand, the law supports
9 fact that the press is entitled to attend depositions.

10 THE COURT: Perhaps.

11 Mr. McGuire?

12 MR. MCGUIRE: I would just point out, Judge, that
13 there's a confidentiality agreement in place in this case,
14 which should bring this to a hasty conclusion: The press
15 should not be allowed at depositions.

16 THE COURT: All right. This -- I mean it was
17 briefed informally, which is fine. I guess it arose in a
18 series of emails between counsel in which -- actually, I
19 think relating to Ms. Bouche's deposition, that Mr. Skolnik
20 advised opposing counsel he intended to invite the press to
21 attend future depositions. And I think, as Mr. Skolnik said,
22 he apparently made the statement because Mr. Crockett
23 allegedly has been -- had been allowing non-party individuals
24 associated with NXIVM to attend depositions and made a
25 comment that depositions should be conducted as if -- as

1 | though they were in open court.

2 | I am going to -- I -- I'm satisfied that under
3 | Rule 26(c), in a protective order standard, that the press
4 | should not be invited to attend depositions in this case for
5 | a number of reasons: (1) the discovery confidentiality order
6 | gives the parties 15 days to designate as confidential any
7 | materials not immediately designated as confidential.
8 | Allowing the press to attend the depositions would eviscerate
9 | this aspect of the discovery confidentiality order, though
10 | it's true that, as Mr. Skolnik has said, a number of courts
11 | have allowed the press to attend depositions, using a Rule 26
12 | protective order burden on a party requesting that the
13 | exclusion of the press from a deposition.

14 | However, this is my research, it was not presented
15 | to me in a framework, but I researched the issue, and it
16 | appears that the majority of courts have concluded that
17 | depositions should not be conducted in presence of the press.
18 | The Supreme Court of the United States has stated: "Pretrial
19 | depositions and interrogatories are not public components of
20 | a civil trial. Such proceedings were not open to the public
21 | at common law, and in general, they are conducted in private
22 | as a matter of modern practice." This is the well-known case
23 | of Seattle Times v. Rhinehart, 467 U.S. 20.

24 | Thus, many courts have precluded the press from
25 | attending depositions. And I'll cite Melendrez v. Arpaio,

1 District of Arizona case, 2009 WL 3489402; Amato v. City of
 2 Richmond, 157 F.R.D. 26, in which the court said public
 3 policy and concerns for judicial economy strongly militate
 4 against allowing the press to attend depositions. And also
 5 the case of Kimberlin v. Quinlan, 145 F.R.D. 1, which denied
 6 CNN's request to attend, observe, videotape and report
 7 depositions.

8 Now, there are cases going the other way. But my
 9 feel of this case, my knowledge of this case, and my
 10 discretion in conducting discovery suggests to me that in
 11 addition to the reasons I've given, we have enough issues and
 12 problems with the case, getting it done, that inviting the
 13 press to the depositions would serve no purpose. I'm not
 14 ruling whether something should be confidential or not.
 15 That's a different issue. But I am going to grant a
 16 protective order to -- so that the press should not attend
 17 depositions in this case.

18 Let's go on to the next issue.

19 MR. McGUIRE: Judge, I'd like to propose that the
 20 Court ask a question of Mr. Skolnik. The initial disclosure
 21 in this case at the outset called for a description of --
 22 which is typical -- description of any insurance that might
 23 be in place. It was answered that that was being looked
 24 into. I find it hard to believe -- Mr. Skolnik has
 25 represented he's appearing in this case pro bono. I find it

1 hard to believe that a institution such as Wellspring, which
2 was treated -- in the course of treating people who allegedly
3 were in a troubled state, or that Dr. Martin as a
4 psychologist, would be bare of insurance.

5 So I'd like a representation from Mr. Skolnik as to
6 whether or not there is insurance involved.

7 THE COURT: Well, this is obviously a request that
8 I don't think I've heard about before. The parties have an
9 absolute duty to update their initial disclosures, and
10 there's no question that initial disclosures in the rule
11 require a full disclosure of any insurance coverage.

12 So I don't know if you want to respond,
13 Mr. Skolnik, or not, but yes, there's no question that you
14 have a duty and so does everyone here have a duty to update
15 initial disclosures, and that should include a disclosure of
16 any insurance coverage.

17 MR. SKOLNIK: Your Honor, I will absolutely look
18 into it again. It is my recollection that it was looked into
19 at the time the initial disclosures were made. As
20 Mr. McGuire is well aware, insurance coverage for medical
21 malpractice and the kinds things that Wellspring and
22 Dr. Martin would likely be insured against is quite different
23 than for a doctor and a mental health institution to have
24 coverage against trade secret and copyright violations, so
25 they may have had insurance for one but not for the other.

1 Obviously, we looked at the insurance that would be relevant
2 to this case. But I will look into it, that update -- and
3 update accordingly.

4 MR. McGUIRE: It would appear to me, Judge, that if
5 there was insurance, that Mr. Skolnik's being paid or was
6 paid. So it doesn't take much beyond that to state whether
7 or not there's insurance.

8 THE COURT: Well, I mean they have -- it has to be
9 answered honestly. I don't know if --

10 MR. SKOLNIK: Your Honor?

11 THE COURT: Yes.

12 MR. SKOLNIK: I will tell you quite honestly, my
13 firm has received not one nickel from any party that we
14 represent in this case, and our current estimate is that we
15 have expended somewhere north of 3 million dollars of legal
16 time in defense of this case. I've represented that to you.
17 I will put it in writing. I will raise my hand and swear it
18 on oath. I will have my firm's accountants come down and
19 confirm it for you.

20 Are you now satisfied, Mr. McGuire?

21 MR. McGUIRE: Yes, I am.

22 MR. SKOLNIK: Good.

23 MR. McGUIRE: Yes, I am.

24 MR. SKOLNIK: And I've told you that several times
25 before.

1 MR. McGUIRE: No, not about Wellspring.

2 THE COURT: Okay. All right. Let's move on to the
3 next issue.

4 And, Mr. McGuire, I'm fine -- I know you're used to
5 standing up in court. But if you want to remain seated,
6 it's --

7 MR. McGUIRE: No, no, as a matter of fact, this
8 thing is more of a nuisance than anything else, Judge.

9 THE COURT: All right. Go ahead.

10 MR. McGUIRE: With the Court's permission, perhaps
11 we ought to get into the issues involving Ms. Bouchey, the
12 first one of which is that -- and before I begin on that,
13 Judge, I'd like Mr. Falzone to read an email that was just
14 received from the magistrate judge in Albany.

15 THE COURT: Okay.

16 MR. McGUIRE: Oh, you weren't aware of that?

17 MR. FALZONE: I was not. But I'm happy to do that.

18 THE COURT: It's not -- okay.

19 MR. FALZONE: Your Honor, this email was --

20 THE COURT: Yeah, you better stand, because it's --
21 yeah, we want to make a record here. So you speak into
22 the -- you could come to the podium, you could go by
23 Mr. McGuire. Yeah. Sure. Just speak in the microphone.

24 MR. FALZONE: I apologize, I have to find that
25 email now. Okay. This was -- this was an email -- it was an

1 | electronic notification that was received over the PACER
 2 | system from the Northern District of New York, and I'm not
 3 | able to access the order from my BlackBerry, but the text
 4 | says that there's been an order issued granting the motion to
 5 | enforce. Ms. Bouchey is to appear for her deposition on
 6 | March 10, 2011, at 9 a.m. at the U.S. Courthouse, 455
 7 | Broadway, Room 410, Albany, New York. By March 4th, 2011,
 8 | Ms. Bouchey is to provide Keeffe's counsel documents in
 9 | response to the December 1st, 2010, subpoena. If Ms. Bouchey
 10 | believes certain responsive documents are privileged, she is
 11 | to bring them to the deposition for *in camera* review. After
 12 | the March 10, 2011, deposition, the Court will decide if the
 13 | second day of testimony is necessary. Signed by Magistrate
 14 | Judge George H. Lowe.

15 | And I believe Ms. Bouchey will have received a copy
 16 | as well.

17 | THE COURT: I mean --

18 | MR. MCGUIRE: The reason I asked for that to be
 19 | read, Your Honor, is because it makes moot, it seems to me,
 20 | the absence of something happening in the future of what I've
 21 | got down as Number 2 on my list, which is the -- and
 22 | Number 3, I guess it is, the use of Ms. Bouchey's deposition
 23 | in October of '09 before we had a -- the ability to
 24 | cross-examine.

25 | THE COURT: Well, let me just comment on this. I

1 | guess, in correspondence, the parties seem to argue the scope
2 | of the -- deposition. But the primary request that was
3 | requested in Mr. McGuire's order on December 22d was that the
4 | Sutton-Ross parties not be permitted to use the deposition,
5 | unless there's time for Ms. Bouchey to appear for a
6 | cross-examination. Apparently, there's an indication this
7 | was offered by -- I don't know -- someone on the plaintiff's
8 | side, but not accepted on the defense side.

9 | And -- well, I was -- I would be -- back up. The
10 | exclusion of testimony on this basis would be something that
11 | I would consider to be a dispositive issue for the district
12 | judge. And it would probably be analyzed under a Poulis
13 | against State Farm situation. I will give you -- I'm not
14 | making a ruling because it hasn't been put before me. If I
15 | were presented with the issue, I would make a strong report
16 | and recommendation that a party be precluded from using that
17 | deposition or testimony unless the witness appeared before
18 | cross-examination.

19 | Now, we get to the issue of Ms. Bouchey's
20 | deposition in itself. I must say that Ms. Bouchey has
21 | written a lengthy and heart-felt, I think, letter to the
22 | Court, advising of some of the history, much of it that has
23 | nothing to do with this case, but also the history of the
24 | deposition in this case. I think she indicated her
25 | willingness to appear for deposition.

1 As a legal matter, I believe -- I haven't
2 researched to see, but I think that the Northern District
3 alone has the authority to quash or modify the subpoena.
4 Fed. R. Civ. P. 45 says on a timely motion, the issuing court
5 must quash or modify a subpoena. There are many cases that
6 say that.

7 I think that this Court does have the power to
8 issue a -- a Rule 26 protective order relating to the
9 deposition. And I'm not sure if that trumps the Northern
10 District, which I think has the -- the authority. And now
11 we've heard the Northern District has ordered a deposition,
12 which seems like one more day of deposition, and then if
13 necessary, to go back and -- we can look at the order -- go
14 back to the judge.

15 So I don't know what -- I'll be happy to hear from
16 anyone who wants to talk about it. I will tell you what my
17 inclination was, and my inclination was that Ms. Bouchev
18 appear for one more day of deposition. That was my
19 inclination.

20 MR. SKOLNIK: Your Honor, I'd like to clarify the
21 record --

22 THE COURT: Okay.

23 MR. SKOLNIK: -- before Ms. Bouchev --

24 THE COURT: Okay.

25 MR. SKOLNIK: -- speaks.

1 THE COURT: Yeah.

2 MR. SKOLNIK: First, the operative subpoena in this
3 case was issued out of this district.

4 THE COURT: Oh, it was?

5 MR. SKOLNIK: Yes, NXIVM has issued or Keeffe has
6 issued three or four or maybe five subpoenas. The most
7 recent, which I have as Number 3 in the recent flurry, was
8 issued out of the United States District Court for the
9 District of New Jersey.

10 On top of that, all of the parties have previously
11 agreed, when Ms. Bouchey had offered to make herself
12 available in early December, that the deposition was going to
13 take place at my office in New Jersey. So between the fact
14 that the deposition is taking place in New Jersey, and the
15 fact that the latest subpoena was issued out of New Jersey, I
16 believe that it is this Court and only this Court that has
17 overall supervisory authority.

18 At the point when a motion was filed by NXIVM up in
19 the Northern District, there was still some question about
20 whether or not Ms. Bouchey was going to appear. They were
21 trying to make an end run around the issue of how many
22 documents she should be required to produce, how many days,
23 because they knew that they would be presenting that to a
24 judge who nothing about this case, who knew nothing about the
25 list of documents that were attached to the subpoena, would

1 not be in a position to know whether or not they had any
2 relevance to this case, like her communications with Yuri
3 Plyam, I think Your Honor knows very well that has nothing to
4 do with this case, as do 90 percent of the document demands
5 that were attached to that subpoena.

6 So that's the background, Your Honor.

7 THE COURT: I appreciate that. I think the -- the
8 subpoena that they -- that the clients moved to enforce or
9 Keeffe moved to enforce, was the New York subpoena; no?
10 Right?

11 MR. CROCKETT: Your Honor, I guess I should respond
12 to that. That is indeed correct. And what happened was
13 there was an agreement that Ms. Bouchey appear here in New
14 Jersey, and so we then issued a subpoena from New Jersey
15 because of that agreement. But then when she didn't appear
16 and when we are receiving difficulty from Ms. Bouchey about
17 her appearance, we have no choice but, then, to issue the
18 final and last subpoena from the District of New York. So --
19 Northern District of New York. So that's the one that the
20 District Court in Northern District of New York has enforced.

21 THE COURT: Let me ask the parties, and I -- I'm --
22 I'm not sure exactly where I stand. I don't want to step on
23 anyone's toes. I mean I'm -- a judge from New York, I -- we
24 just heard about that.

25 But the parties are here and Ms. Bouchey is here.

1 I wonder whether the parties want to perhaps confer in a
 2 civil way to make arrangements for Ms. Boucheys deposition
 3 in New Jersey to -- matter of fact, I would offer a
 4 deposition in this courthouse. I don't know if that's
 5 convenient for anyone or not. But I know Ms. Boucheys had
 6 raised concerns about the nature of the questioning by
 7 Mr. Crockett, frankly, at prior depositions, at six prior
 8 depositions. I'm not imposing this on anyone. I'm not
 9 forcing it. But I'm suggesting that perhaps may not want to
 10 fight over this one, that -- in other words, I was going to
 11 order -- I was just going to issue a protective order for
 12 another day of deposition. The judge in New York has ordered
 13 another day of deposition, presumably in New York. I wonder
 14 if you want to do it that way, if you -- you know, maybe you
 15 can work this out.

16 Ms. Boucheys, do you want to be heard?

17 MS. BOUCHEY: If that's possible? That I can be
 18 heard?

19 THE COURT: Yes, absolutely. I'll be happy to hear
 20 from you. I mean you're -- of course, you have a right to
 21 represent yourself, and you -- you clearly are a part- -- not
 22 a party, but you're involved as a deponent, a witness, a
 23 subpoenaed witness in this proceeding. So I'd be happy to
 24 hear from you.

25 MS. BOUCHEY: I --

1 THE COURT: You may want to speak into a
2 microphone, just to make a record.

3 MS. BOUCHEY: Okay.

4 THE COURT: It's up to you, but ...

5 MS. BOUCHEY: I apologize. I'm a little nervous.

6 THE COURT: It's all right.

7 MS. BOUCHEY: It's not my forte.

8 THE COURT: If you want to sit down, I have no
9 problem --

10 MS. BOUCHEY: No. It's okay.

11 First off, with all due honesty, I feel a little
12 bit of a tug-of-war, and it appears as though, in my
13 impression, that I'm a witness that both sides are interested
14 in but for completely different reasons.

15 Your Honor, my biggest concern wasn't to show up
16 for a deposition. I'm perfectly willing to do and have
17 always been willing to do that.

18 My concern was the records that are being asked
19 for. Mr. Crockett has issued three subpoenas to me, and
20 prior to that, I already complied with two very lengthy
21 subpoenas. This subpoena, however, that Mr. Crockett has
22 issued is asking for what I deem to be highly inappropriate
23 records. And what I wanted to bring to the Court's attention
24 is what I believe is the crux of what's going on as it
25 relates to me is that I've been mischaracterized as somebody

1 | who is an embittered ex-employee. I was never even an
2 | employee of NXIVM. I was a volunteer for the most part who
3 | earned commissions on selling some products. I had no
4 | authority, no decision. And since I've severed my ties for
5 | the last two years, Your Honor, just to bring it to the
6 | Court's attention, NXIVM has brought two adversarial lawsuits
7 | against me. The Bronfmans, the Seagram 7 heiresses, who are
8 | high-ranking and leaders and members, have brought two
9 | lawsuits against me, two that are still currently pending.
10 | They've reported me to my financial planning ethics board.
11 | They reported me to FINRA, my securities license, both for
12 | criminal investigation and misappropriation of funds, which
13 | are completely unfounded. They also brought in the district
14 | attorney of Saratoga County of accusing me of extortion and
15 | criminal charges because I asked Keith Raniere to pay me back
16 | 1.6 million dollars that he owes me, which now is being
17 | mislabeled into extortion. I've already been dragged into
18 | three or four of their other lawsuits as a witness and
19 | produced 23 boxes of material, over a hundred thousand pages.
20 | I've sat for 30 hours of depositions already.

21 | What this is about, in my opinion, is an attempt to
22 | intimidate me and to silence me. And I just want to move on
23 | with my life.

24 | And so it's not that I don't want to be deposed.
25 | I've complied with all of these subpoenas and all the

1 depositions so far, and I've been driven into bankruptcy.
2 I'm here representing myself because I can't afford to keep
3 up with the legal fees. That's why I'm here in the first
4 place.

5 In my opinion, they're trying to circumvent this
6 Court, where I believe you probably, out of anybody, could
7 help me look at what they're asking me for in records, and to
8 determine is there an abuse of legal process going on here,
9 and are they possibly asking me for records that they're
10 going to use in other litigations against me and against
11 other people. And is this appropriate? Just where are the
12 boundaries, and how many attorneys can depose me? How many
13 days?

14 And so I was arguing the second day and arguing the
15 records, and to file this into the state of New York was not
16 because I wasn't going to come be deposed. It was, in my
17 opinion, to circumvent this Court's ability to really rule on
18 these and go to a court that knows nothing.

19 The reason I was coming here to New Jersey is I
20 volunteered to come here because I can't afford an attorney,
21 and I've found an attorney in New Jersey who's willing to do
22 the pro bono deposition for me. So that's why I'm willing to
23 come here. I'm not trying to circumvent New York state.

24 So I'm a little disturbed at what I just heard
25 about the New York court granting the subpoena. I'm not a

1 lawyer. I don't know which subpoena it was. I don't recall
2 which documents it was. All I know is I'm a little
3 distressed thinking, you know, I'm not getting any help here.
4 And this has been going on for almost two years. And some
5 court, some judge needs to stop and look at what's going on
6 here. I -- I -- this is outrageous, what's going on here.

7 And so what I am hoping and praying for is that you
8 maybe have the power to assist me with the subpoena and the
9 records so that we can determine what is appropriate for
10 NXIVM to ask of me to produce in documents. They're asking
11 for attorney-client privilege information. They're asking
12 for government investigation possibility information. The --
13 they theorize that I've been brought in by government
14 investigations to speak in regards to certain matters that I
15 may know about. And they're also asking for records for
16 other litigation. They have a trial coming up in California
17 next month in the Plyam case, and they're asking me for
18 records from correspondence with the Plyams which have
19 nothing to do with Rick Ross putting copyright notes on a
20 website. What does real estate in California have to do with
21 copyright NXIVM coach notes?

22 So I apologize, if I'm even take up too much time;
23 I don't know what's appropriate, but --

24 THE COURT: --

25 MS. BOUCHEY: I -- I'm hoping that I -- you will

1 help me with what records are appropriate and so that we can
 2 have a thorough exploration of this because I'm afraid that
 3 this is going to be somehow twisted and contorted, which it
 4 has been. And all I'm doing is being dragged in by both
 5 sides, both sides here dragged me in, and they just want to
 6 ask me what I know because I'm one of the only people in the
 7 last 10 years who was in the proximity of the inner workings
 8 of NXIVM. And I had -- for a time had a relationship with
 9 Keith Raniere. And so I am privy to many things at NXIVM,
 10 and I'm one of the only people in the last 10 years that has
 11 exited NXIVM that could possibly share some of this knowledge
 12 in a truthful and factual way, which I've been doing, to the
 13 best of my ability, and it's being labeled as my telling
 14 elaborate tales, you know, I'm making stuff up. I'm -- you
 15 know, this is ridiculous. You know, I just want to say my
 16 piece, go home, put my life back together. I could have
 17 retired 10 years ago, and I just filed bankruptcy. This is
 18 really an injustice.

19 So that's my hope.

20 THE COURT: Thank you. I understand.

21 I want to explain to you, okay, I'm magistrate
 22 judge, and what that means is I don't get to decide
 23 ultimately who's right or wrong.

24 MS. BOUCHEY: Right.

25 THE COURT: So I just want you to understand that.

1 I'm here to move things along and of course do justice the
2 best I can.

3 As far as -- and that's why I raised what I raised,
4 which was a recommendation that perhaps the parties confer,
5 especially now that I hear that you have a pro bono lawyer
6 who's willing to represent you, perhaps you can all come to
7 some agreement for a deposition in New Jersey. I can't -- I
8 don't know that I can force the parties to do that. I'm
9 going to leave the parties to figure out what trumps what in
10 this situation, as a matter of law, I'm the magistrate
11 controlling the case, but the -- the subpoena that was issued
12 was one that was out of the District of New York.

13 I will say, as I've said, that my intention was for
14 one more day of deposition; and, two, you know, it's very
15 hard to decide the document issue because they're just not
16 really articulated in a way for me. But I absolutely would
17 not allow a deposition subpoena in this case to get documents
18 that relate to other cases. They're going to have to relate
19 to this case. And some of those things on that -- on that
20 list relating to the Plyam litigation -- and perhaps that's
21 the wrong way to pronounce it -- have -- I -- have no
22 conceivable -- or I should say have no conceivable relevance,
23 but they certainly don't rise to the level of relevance I
24 think necessary for this case, and that could be addressed in
25 other cases. And I -- you know, I don't know what else there

1 was. The -- the government investigations, I don't think
2 that has anything to do with this case.

3 MS. BOUCHEY: Well, they're also asking me for
4 correspondence and any writings between Sara and Clare
5 Bronfman, who were ex-clients of my financial planning firm,
6 and I've already produced every record that I already have to
7 Mr. Crockett. So I'm puzzled why that's included as well. I
8 mean, there's a lot of elements in there that absolutely
9 don't make any sense nor -- cause me grave concern.

10 THE COURT: I hear you. I -- you know, I -- it's
11 just not put before me in a way to know. I don't know if --
12 I haven't seen the documents, I don't --

13 MS. BOUCHEY: So can I put -- how can we put
14 something before you so that could know and could decide?

15 THE COURT: Well, I -- we're going to have to hear
16 from lawyers. This is very complex. What I'm recommending
17 is the parties perhaps confer and agree on a deposition in
18 New Jersey, perhaps in this courthouse -- and I -- I don't
19 know that I can force them to do that. And then I would be
20 available to handle any disputes that -- that came up.

21 Now, I will be available by telephone to handle any
22 disputes that come up, as long as we do it at a certain time.

23 MS. BOUCHEY: So that -- that is a very agreeable
24 to me, Your Honor.

25 THE COURT: I know -- I appreciate that. But I --

1 I have to do justice by all sides.

2 MS. BOUCHEY: Right.

3 THE COURT: I have to hear from the lawyers, and
4 you know, they would have to agree, and they may also have
5 legal views that the order from the Northern District trumps
6 my ability to issue a protective order.

7 But I think that -- I just think that that is a
8 reasonable way to resolve this dispute. And I have no
9 problem with what I've said being presented to the judge in
10 the Northern District as a recommendation of how this might
11 be handled.

12 MS. BOUCHEY: Your Honor, just one more thing, and
13 I appreciate your time. Given that I've been dealing with
14 NXIVM and their attorneys in five of their litigations over
15 the last two years, including four lawsuits against me, I've
16 come to know and recognize that there's no going into a back
17 conference room and being gentlemen and gentlewomen and
18 coming to some mutually compromising decision. And so I --
19 not to say that that's not possible here. But I've learned
20 that that doesn't work, because I did request that of --
21 NXIVM to discuss the records, and their response to that was
22 to file a 250-page motion in Northern District of New York
23 and here. So there was no discussing it.

24 So I guess what I'm asking is let's assume, just
25 for a moment, that there's no discussing or there's no

1 | agreement. What are my rights as a individual to have the
2 | records being subpoenaed be reviewed by the Court to
3 | determine if an abusive process is occurring?

4 | THE COURT: You know, I -- I -- I sympathize with
5 | you, Ms. Bouchee, on some level, but unfortunately, my role
6 | is not to give legal advice --

7 | MS. BOUCHEY: To do that.

8 | THE COURT: -- in any way. I can't tell you what
9 | your rights are. I think that what you might want to do, you
10 | say you found a pro bono attorney --

11 | MS. BOUCHEY: Right.

12 | THE COURT: -- who's willing to represent you. I
13 | think you should confer with that pro bono attorney as to
14 | what can be done.

15 | MS. BOUCHEY: Well, yeah, I wasn't looking for my
16 | rights. I was wondering how the Court handles the subpoena
17 | of the records?

18 | THE COURT: Well, I mean -- you mean -- well, I --
19 | I think that the -- the Northern District -- and we just
20 | heard this from -- seemed to suggest that the records should
21 | be brought and they would be subject to *in camera* -- did it
22 | say *in camera* review? I mean I think we have to look at that
23 | Northern District of New York order --

24 | MS. BOUCHEY: Okay.

25 | THE COURT: -- which seems to mention an *in camera*

1 review of some documents, which means the judge would look at
2 them.

3 MS. BOUCHEY: Oh.

4 THE COURT: But I guess what I'm suggesting -- I
5 still haven't heard from counsel --

6 MS. BOUCHEY: Okay.

7 THE COURT: -- is that perhaps, one, since I am
8 somewhat familiar with the case, this case here, that we have
9 a deposition here.

10 MS. BOUCHEY: Yes.

11 THE COURT: You have a pro bono lawyer in New
12 Jersey. We have the deposition here, and I would be
13 available to resolve disputes.

14 MS. BOUCHEY: Okay.

15 THE COURT: Now --

16 MS. BOUCHEY: Okay, thank you.

17 THE COURT: -- okay.

18 MS. BOUCHEY: Thank you.

19 THE COURT: Mr. Skolnik?

20 MR. SKOLNIK: Yes, Your Honor, let me say that I
21 think the idea of having a one-day deposition here in this
22 courtroom is an excellent idea. I'm confident that all of
23 the lawyers on this side would agree. I am equally confident
24 that somebody from the other side is going to stand up and
25 say, no, no, we don't like that. And -- and I'll let you

1 read between the lines why they would be saying that.

2 But I think that we ought to state our positions
3 about whether or not there's agreement about a deposition in
4 New Jersey in this courthouse. I think that the date of such
5 a deposition could easily be arrived at as long as there's
6 agreement that it be done.

7 And I would suggest, Your Honor, that in terms of
8 the documents, clearly, you have the -- the ability and the
9 power and the authority to confer, if necessary, with the
10 magistrate judge in the Northern District. It seems to me
11 that where we are, you have already expressed your impression
12 about some of the categories of documents. It seems to me
13 that one resolution of that would be for Ms. Bouchey to
14 produce what they thought was appropriate to this case, and
15 if NXIVM had some problem with that, they could then file a
16 further motion before Your Honor to say no, no, Your Honor,
17 you understand this case, here's why we think these other
18 documents are relevant. That seems to me to be, in fact, the
19 judicious way of handling all this.

20 THE COURT: I'm not adverse to that. I'm not
21 adverse to that.

22 Mr. McGuire?

23 MR. MCGUIRE: Judge, the motion that was made in
24 the Northern District of New York was made in good faith. It
25 was made because there was a serious question about the

1 jurisdiction here in New Jersey, whereas this woman is a
2 resident, as I understand it, of Albany County, if that's
3 what it's called up there, but she's certainly a resident, a
4 domiciliary of the Northern District of New York.

5 What Mr. Skolnik is suggesting is once again let
6 her make the decision about what documents are relevant. Let
7 her bring those documents here. I don't want to fight those
8 fights. The judge in the Northern District has ruled.

9 As far as Ms. Bouchey's statements this morning, we
10 didn't force her into bankruptcy. A lawsuit was filed
11 against her for, as I understand it -- Mr. Crockett knows
12 more about this than I, since it's in California -- for a
13 breach of fiduciary duties to her in excess of a million
14 dollars -- I forget what the number was. The day before she
15 was to be deposed in that case, she filed for bankruptcy,
16 voluntarily; we didn't force her. But she's got these
17 conclusions -- and I recognize she's not a lawyer, but she's
18 free with these words. And secondly, there is ample evidence
19 in these emails that she and Mr. Skolnik are -- I received a
20 letter from Ms. Bouchey just the other day, clearly a
21 lawyer-written letter. She may not have a lawyer right now,
22 but she's getting advice from somebody; whether it's
23 Mr. Skolnik or somebody else, I don't know. But she lives in
24 the Northern District. The judge has issued an order up
25 there, and I think we ought to abide by that order to avoid

1 any problems, because I can see all kinds of problems coming
2 out if she's allowed to decide down here what documents are
3 relevant.

4 Now, Mr. Crockett can address the --

5 THE COURT: Let me just comment there. Of course,
6 I make no -- I -- I have no idea, you know, about bankruptcy
7 or any of that. I'm not -- I'm not giving any -- expressing
8 any opinion.

9 I was not suggesting myself, just so you understand
10 and everyone understands, that -- that Ms. Bouchey decides
11 herself. I was just offering my services to be in the area
12 to make decisions; in other words, just like in New York, the
13 documents might be brought to the deposition, and if there
14 was a dispute -- you know, but -- because I -- I would make
15 it clear, and I may -- I may decide to issue a protective
16 order notwithstanding what they did in New York, I -- I think
17 documents that are of no relevance or tangential relevance to
18 this litigation should not be involved in this litigation.

19 (Simultaneous conversation)

20 MR. McGUIRE: I don't disagree with that, Judge.

21 MR. SKOLNIK: Your Honor, is there any reason why
22 we don't get out a copy of the operative subpoena and let you
23 rule right now by looking at a very short list -- no, this
24 has nothing to do with this case or it does. I mean
25 otherwise, we're spinning wheels here, and we'll continue to

1 spin wheels --

2 THE COURT: We are, Mr. Skolnik --

3 MR. SKOLNIK: -- for months.

4 THE COURT: -- I mean it's not -- it's not
5 incredibly fair to me to just let me -- I mean -- you know --
6 I might want to hear arguments. I don't really remember.
7 This thing is so convoluted at this point. Let's face it.
8 The case is -- it's got a lot of twists and turns. So I
9 understand what you're saying, but I mean for me to just
10 right now do it. I --

11 MR. SKOLNIK: Your Honor, I appreciate that. What
12 I'm really suggesting --

13 THE COURT: -- I don't -- I don't know -- for
14 example, Ford Greene, Ford Greene is a document that they
15 want. Ford Greene is listed as someone who's on the board of
16 NXIVM.

17 MR. McGUIRE: No --

18 THE COURT: -- who's --

19 MR. McGUIRE: -- no. On the board of Ross
20 Institute.

21 THE COURT: Oh, I'm sorry. I'm so sorry. Yeah,
22 Ross Institute.

23 MR. McGUIRE: Sorry about that.

24 THE COURT: And I -- Ross Institute.

25 So arguably that brings in Ross Institute on some

1 level, but then he's -- he's a lawyer in the Plyam case over
2 there, so I don't care. I don't want anything on the Plyam
3 case, but if it has something to do with Ross --

4 MS. BOUCHEY: Your Honor --

5 (Simultaneous conversation)

6 MS. BOUCHEY: -- let me clarify. NXIVM is
7 suggesting that I conspired with Rick Ross and got Ford
8 Greene as an attorney for Rick Ross. And the fact of the
9 matter is the Bronfmans' family friend, Sue White, referred
10 me to Ford Greene because they're good friends. And I had
11 one single meeting with Ford Greene, one month after I left
12 NXIVM because I was concerned that I had been involved in a
13 cult, and Ford Greene does cult litigation, and I met with
14 him once. Once.

15 Months later, he became the attorney for the Plyams
16 because they too thought maybe we need someone who has
17 expertise in that area. Now, they're trying to connect that
18 dot, and that dot doesn't connect.

19 So they're asking me for my emails between Ford
20 Greene and myself, but my only communication with Ford Greene
21 was when he was for a brief moment in time my attorney, so
22 they're attorney-client privileged documents. That's the
23 clear answer here. And this was argued in California already
24 with Mr. Crockett, you know, that you can't have those.
25 They're -- they're irrelevant to this case. And he was my

1 attorney for a brief shining one day in California. And it's
2 absurd. And it didn't come from Rick Ross. This is just
3 absolutely outrageous. I don't even know Rick Ross. I've
4 never talked to him. I've never met him.

5 THE COURT: Well, obviously any attorney-client
6 privileged communication is not going to be ordered by me.

7 MS. BOUCHEY: Right. And that's exactly --

8 MR. McGUIRE: Wouldn't be ordered by any judge.

9 THE COURT: Right.

10 MR. McGUIRE: Wouldn't be ordered by any other
11 judge, either.

12 THE COURT: Right.

13 MR. McGUIRE: Judge, I'm going to let
14 Mr. Crockett --

15 THE COURT: Okay.

16 MR. McGUIRE: -- address the other issues.

17 MR. CROCKETT: Your Honor, we're not asking for any
18 documents from Ford Greene.

19 THE COURT: Oh, no?

20 MR. CROCKETT: No. Our subpoena -- our
21 December 1st subpoena doesn't ask for government
22 investigation material.

23 THE COURT: No?

24 MR. CROCKETT: Our subpoena does not ask for
25 documents from Ford Greene. Our subpoena does not ask for

1 documents between Sara and Clare Bronfman and her.

2 Now, what we do ask for is phone records which
3 reflect calls made between her and Paul -- Ford Greene. So
4 if she has phone records placed to Ford Greene, we want to
5 get the timing of those, because that would -- that would
6 help in fixing some events in this case. But we're not
7 asking for --

8 MR. SKOLNIK: Which events of this case, Bob?

9 MR. CROCKETT: Your Honor, if I may continue?

10 THE COURT: Yeah, let's let -- Mr. Skolnik, please.

11 MR. CROCKETT: Let me continue.

12 THE COURT: Please address the Court.

13 MR. CROCKETT: So -- so if you look at the list of
14 documents we're requesting, they're very limited.

15 Let me address the Plyam -- the Plyam issue.

16 THE COURT: Okay.

17 MR. CROCKETT: I don't intend and will not use any
18 Plyam material that's generated in this case for some other
19 case. But the -- Ms. Bouche is -- is -- was not
20 characterized in the letter to you as an embittered
21 ex-employee. That -- those words are not contained anywhere
22 in any letter that you've received.

23 She's -- she's a witness who we would rather not
24 see testify in this case. She's an embittered ex-girlfriend
25 of Keith Raniere. She -- she and he broke up and -- broke up

1 | their relations, and four days later she sent an extortion
 2 | letter demanding that NXIVM pay debts that she claimed that
 3 | she was owed that were like eight years old when she invested
 4 | in some sort of scheme with Keith Raniere. And -- and so she
 5 | was called as a witness by the plaintiffs -- by the
 6 | defendants, because she had inside knowledge. And she
 7 | spilled it. And she spent a day spilling it, talking about
 8 | Keith Raniere's sexual history, talking about break-ins and
 9 | all these false claims.

10 | Now, they intend to make a circus of this case by
 11 | putting Ms. Bouchey on the stand and to unravel NXIVM when
 12 | all this -- all this case involves is a simple theft of trade
 13 | secrets. That is all it involves. But they intend to put
 14 | her up for all sorts of reasons unrelated to that.

15 | So -- so my job and Mr. McGuire's job is to show
 16 | that she is an embittered ex-girlfriend. She's embittered on
 17 | a number of reasons and a number of factors. She's been
 18 | unhappy because she -- because the Bronfmans terminated their
 19 | financial relationship with her where she was their financial
 20 | advisor. I mean, we've got to show all that. We've got to
 21 | show that -- that moneys are missing that she was handling,
 22 | and the Bronfmans are mad about that. I mean, we would
 23 | rather her not come at all and testify. Just stay home. But
 24 | she's going to appear and talk about break-ins and all these
 25 | other things.

1 So -- so we've delivered a very limited subset of
2 materials we want. We're not asking for the moon -- sun,
3 moon, and stars here.

4 And -- and just a couple of final points. She
5 talks about me being involved in a lawsuit. I should say
6 that we got a restraining order against her from -- she was
7 publicly disseminating the Bronfmans' financial materials to
8 the press. We got a restraining order against her. She was
9 ordered to appear for her deposition, and she refused, and
10 instead filed bankruptcy.

11 So -- so the reason why we had to go to New York is
12 we -- we wanted to accept Mr. Skolnik's offer to have her
13 come here and testify, and we were willing to agree to do
14 that. But when she wouldn't come here to testify, after we
15 issued subpoenas from this Court, we looked around and said,
16 well, what enforcement remedies do we have? I mean we relied
17 on Mr. Skolnik's good faith. We've been trying to get
18 Ms. Bronfman [sic] and -- to resume for a year. Ms. --
19 Ms. Bouchey for a year. We argued to Mr. Skolnik and to
20 Mr. Sylvester that really it's their job to get Ms. Bouchey
21 as -- Ms. Bouchey's deposition completed. Why are we being
22 forced to go through all these motions to get her to come
23 back? And when it appeared we were stalled here in New
24 Jersey because she just wouldn't cooperate and they wouldn't
25 cooperate, then we said, well, we have no choice but to

1 deliver a subpoena from New York, which we did.

2 So at this point, Your Honor, we would request that
3 the deposition occur in a place where we know we have
4 jurisdiction over her, where we know that she can -- she
5 can't hide, and we know that we can get a court order, if
6 need be.

7 Now, doesn't mean to say that Your Honor doesn't
8 have the right to grant protective orders and to govern the
9 conduct of counsel. Absolutely. You -- Your Honor has the
10 right to tell us -- we don't -- Your Honor could say to us,
11 we don't care what the Northern District of New York says, I
12 don't want you asking for the following documents and things.
13 I'm willing to abide by that. But I've got to have her in a
14 place where I know that she is bound by court order, because
15 she isn't here.

16 THE COURT: Well, I -- she -- if she subjects
17 herself to jurisdiction here, she would be, as far as I'm
18 concerned.

19 But I also want to make a comment because you made
20 an interesting comment that applies every which way, which
21 is, you know, this is a simple case about the theft of trade
22 secrets. Now, yes, but look at really what's happened on
23 both sides, with all due respect, it's -- it's gotten very
24 far from that.

25 And I do want to just say one thing with respect to

1 your concerns, Mr. Crockett, about what Ms. Bouchey can and
2 not say -- I'm dealing with discovery -- can't say at trial,
3 is that I think all counsel can be confident that District
4 Judge Cavanaugh will have a very good handle and make
5 decisions as to what comes into this case and what doesn't
6 come into the case.

7 But we've gone down the road in terms of discovery,
8 and there's really no turning back. We've spent a lot of
9 time, and I don't know what was asked in the first 180 pages
10 of Ms. Bouchey's deposition. I saw some of the pages. And I
11 think it's only fair that the other side get to cross-examine
12 at this point.

13 So my suggestion stands. It doesn't sound like
14 it'll carry the day, although I don't think that it's
15 impossible that some agreement could be -- could be met. But
16 I'm not going to -- I'll let you do this off the record to
17 see if you want to.

18 Yes, sir?

19 MR. CROCKETT: Your Honor, just two things.

20 THE COURT: Yeah.

21 MR. CROCKETT: First, with regard to Ms. Bouchey,
22 she was proffered, as I understand it, by the plaintiff as a
23 witness in this case with knowledge of damages. So there's
24 relevant knowledge, apparently, there's -- plaintiffs believe
25 she has with regard to damages. And secondly, Ms. Bouchey's

1 here voluntarily in the state of New Jersey. And, you know,
 2 she's subject to process right now, so to speak, in the
 3 jurisdiction of this Court. And if I hear that -- and I
 4 think I did hear that Ms. Bouchey is perfectly willing to
 5 give a deposition here in New Jersey, then I suspect that
 6 this thing can all be done as a practical matter by simply
 7 asking Ms. Bouchey if she'd be willing to accept a subpoena
 8 that would be -- served here in New Jersey. It could be
 9 easily be done. And then she's subject to Your Honor's
 10 jurisdiction, which -- I happen to think, personally, I think
 11 she is in any event with regard to the substantive issues as
 12 to what testimony should be given or not given and what
 13 documents would be produced.

14 MR. SKOLNIK: And, Your Honor, I just want to
 15 clarify a statement that Mr. Crockett made that -- that she
 16 refused to cooperate with the deposition. As Your Honor well
 17 knows, because she wrote letters to you, the only issues that
 18 were raised after the issuance of the last subpoena were how
 19 many days this deposition was going to go on and what
 20 documents were going to be produced. So the notion that they
 21 had to go running to a judge totally unfamiliar with this
 22 case to decide those issues, I think is spurious and is
 23 indicative of the way that they've been trying to litigate
 24 this case. There was no reason whatsoever for this matter to
 25 be brought to a Northern District judge. None. None. The

1 | issue of duration and scope of the documents should have been
2 | handled here to begin with, and I suggest should be resolved
3 | here.

4 | THE COURT: Well, I'll make just a comment. I hear
5 | what you're saying. I'm -- I'm going to leave it to you
6 | folks as to how -- I'm going to let you decide and figure out
7 | how to do it, and I'll do what I think is appropriate.

8 | It's my belief that it won't make much difference
9 | whether Ms. Bouchey is deposed in the Northern District or
10 | here. And I don't think it'll make a tremendous difference
11 | in whether the documents -- more documents will be allowed up
12 | there or not allowed down here. I may confer with the
13 | magistrate judge or the district judge -- I don't know who
14 | made the decision. And so I have a feeling that as a
15 | practical matter, you all may want to think about that.

16 | I think we should move on to the next topic at this
17 | point, folks. There is an order out there. I may issue a
18 | protective order. But I still -- counsel, I would urge for
19 | the ease of everyone on some level, that you continue with
20 | Ms. Bouchey's deposition here.

21 | Okay. What's the next issue?

22 | MR. MCGUIRE: It's just a -- it's a simple one,
23 | Judge, the right of a party representative to attend
24 | depositions. I thought that had been covered in one of
25 | your --

1 THE COURT: Well, I --

2 MR. McGUIRE: -- at more than one time by
3 Your Honor, but --

4 THE COURT: That -- that's the general rule. I'm
5 not going to change it. Any party has the right to -- any
6 party has the right to apply for a protective order. They
7 have to meet a "good cause" standard, which would I think in
8 this context, given the general rule, would be stringent --
9 stringent good cause. And as far as I'm concerned, party
10 witnesses have a right to attend depositions. And if someone
11 has a good reason for that not being the case and want to
12 make an application, I'll hear it and decide it.

13 MR. SKOLNIK: Your Honor, I think -- I think the
14 issue, though, is who it is who is and is not a party
15 representative. And think that -- that Ms. Bouchev might
16 have some -- some opinions on the question of the
17 appropriateness of people like Kristin Keefte and the
18 Bronfmans appearing at her deposition whenever and wherever
19 it is.

20 And when I say that, it's something of a slippery
21 issue. NXIVM -- NXIVM has a nice ability to decide that
22 somebody is a senior insider for one purpose and not for
23 another. We have been trying to get deposition of a woman by
24 the name of Pam Cafritz for several months. Pam Cafritz was
25 involved with Keith Raniere from Consumers Buyline. She is

1 and continues to be one of the senior-most members of NXIVM.
 2 In one of their subpoenas, they defined "the NXIVM Group" as
 3 several people, including Pam Cafritz, but repeatedly now,
 4 Mr. Crockett and Mr. McGuire say, no, Pam Cafritz is not
 5 subject to notice. She has to be subpoenaed. So the whole
 6 question of who is a representative of NXIVM and who isn't a
 7 representative of NXIVM is sort of a moving target.

8 THE COURT: Okay. I mean there are ways to decide
 9 that issue, but I think for -- in terms of -- I mean,
 10 presumably, whoever's going to attend these depositions as a
 11 party representative is just going -- is just going to be not
 12 not participate or interfere in any way. So you know, I
 13 suppose, you know, to the extent that they have Ms. Cafritz
 14 appear at a deposition as a party representative, that would
 15 strengthen your argument that they have control over this
 16 person and they should be produced for deposition.

17 MR. SKOLNIK: No, she -- she has not appeared at
 18 deposition. On the contrary --

19 THE COURT: Oh.

20 MR. SKOLNIK: -- she is doing everything she can to
 21 avoid service of the subpoena.

22 What I'm saying is that some of their document
 23 demands, they have asked for documents, including
 24 communications with her, because she is listed as one of four
 25 or five high-level -- it's -- it's Keith Raniere, Nancy

1 | Salzman, Kristin Keeffe, Pam Cafritz, I mean she is one of
2 | that inner core. And yet, when it comes to accepting a
3 | notice for her deposition, they say, no, no, she would have
4 | to be subpoenaed.

5 | THE COURT: I mean if you asked a certified
6 | interrogatory question, someone would swear that -- I'm
7 | trying to say that it seems like something that's easy to --
8 | to resolve. No?

9 | MR. SKOLNIK: -- we --

10 | THE COURT: -- in other words, if someone asked
11 | Mr. Crockett -- I don't -- this -- talk right now. This --
12 | I -- not put before me to decide, but is this person a -- a
13 | whatever it is, an employee, or a control- -- a director, or
14 | someone -- a manager?

15 | MR. CROCKETT: No, she's not.

16 | THE COURT: You don't have to answer the question.
17 | My point is can't that question be asked and --

18 | MR. CROCKETT: It ought to be. And we'd answer it.

19 | THE COURT: So what about that, Mr. -- I -- I'm
20 | not --

21 | MR. SKOLNIK: Your Honor --

22 | THE COURT: --

23 | MR. SKOLNIK: Your Honor, NXIVM has no employees.
24 | They've never had employees.

25 | MR. CROCKETT: That's not --

1 THE COURT: They're not employees --

2 (Simultaneous conversation)

3 MR. CROCKETT: That's not true either.

4 THE COURT: Whatever you want to call them.

5 What?

6 MR. CROCKETT: That's not true either. What
7 Mr. Skolnik says is not true. And, in fact, the facts have
8 come out in deposition of the contrary.

9 THE COURT: I -- okay, let me back up. We got into
10 this. As far as I'm concerned, party representatives can
11 appear. If you have a specific issue and problem, raise it
12 with me. You can make it with a phone call. I don't have
13 anything more to decide right at the moment.

14 This seems to be some new issue. Did you raise
15 this anywhere or you just -- one of those things you said you
16 would do orally in your letter yesterday?

17 MR. SKOLNIK: It's something that I had anticipated
18 coming up today, Your Honor, in terms of -- in terms of the
19 who else really should be deposed in this case and who should
20 not be.

21 MR. CROCKETT: I thought Your Honor wanted us to
22 exhaust our side first before we --

23 THE COURT: No, I do, but I just want to see where
24 it was --

25 MR. CROCKETT: Okay.

1 THE COURT: -- because I didn't --

2 MR. CROCKETT: Yeah.

3 THE COURT: -- I just get mixed up as to -- to what
4 you were talking about there.

5 MR. CROCKETT: On the plaintiff's side of -- of
6 the -- the plaintiff's side of the ledger, in terms of what
7 we were asking for, there's just a -- a letter that we asked
8 with respect to Wellspring, we took the deposition of the
9 30(b)(6) witness of Wellspring, and he -- he indicated that
10 the deceased defendant Paul Martin kept his business notes on
11 a laptop and carried them into meetings, board meetings, and
12 typed his notes on a laptop -- on a laptop, but Wellspring
13 made no effort to inspect that laptop prior to the deposition
14 to see if there were any of -- any of the notes on there. We
15 subpoenaed all those documents.

16 So we asked for two things, alternative, produce
17 the laptop to us so that we can look for ourselves, or at
18 least do a good faith -- undertake a good-faith effort to
19 retrieve that laptop, look for it, look to see if there is
20 any responsive materials and provide a certification. That's
21 point one of the Wellspring letter we sent.

22 And the point two of the Wellspring letter was that
23 when we deposed Dr. Bjornstat [phonetic], the 12(b)(6)
24 witness, he -- he identified all sorts of witnesses, all
25 sorts of employees, he couldn't remember their names, of

1 | Wellspring, of the defendant, who would have had knowledge of
2 | the operative events. But the interrogatory, he said, there
3 | was only one employee.

4 | THE COURT: Mr. Skolnik, you represent Wellspring;
5 | is that correct?

6 | MR. SKOLNIK: I do, Your Honor.

7 | THE COURT: So you didn't respond to this letter,
8 | at least that I saw. Maybe you responded in this latest
9 | thing? I don't -- I -- I haven't seen a response. I mean,
10 | first of all, Dr. Martin is dead. No one has take- -- has
11 | done anything under Rule -- what is it Rule 25? Rule --
12 | suggestion of death rule. I don't know where he stands in
13 | terms of -- you know there's a rule that deals with
14 | someone -- when a party dies. He was a party to this case;
15 | right?

16 | MR. SKOLNIK: He was indeed, yes.

17 | THE COURT: So someone should look at the rule on
18 | suggestion of death and -- and comply with it.

19 | I'm not saying you should -- I don't even remember
20 | who should do it. I'm just -- but -- but -- what I'm saying
21 | is you didn't respond to -- to this. I mean, I guess
22 | that's -- well -- who knows -- who has the computers? Family
23 | has the computer or is -- I don't -- it seems very borderline
24 | to me, but I -- you just didn't really respond, that I saw.

25 | MR. SKOLNIK: You're right, Your Honor, I -- I did

1 not respond, other than to double-check what the testimony
 2 had been about this. You should understand that while
 3 Mr. Crockett is citing from Mr. Bjornstat's deposition,
 4 Mr. Bjornstat was not a -- a resident of the area of
 5 Wellspring and had only tangential knowledge of the
 6 operations within the day-to-day operations of Wellspring and
 7 Dr. Martin's day-to-day operations. It was Liz Shaw who had
 8 that intimate day-to-day knowledge. Liz Shaw testified that
 9 Dr. Martin never did Wellspring work on his laptop. She
 10 testified at length that he kept an absolute separation
 11 between his work for Wellspring, which consisted of about one
 12 third of his time, and his work as Paul R. Martin, who did
 13 expert witness work and who was responsible for writing the
 14 articles that are at issue in this case.

15 So she also testified that among all the people at
 16 Wellspring, she was the person best situated to know exactly
 17 what Dr. Martin did and did not do. What he did at
 18 Wellspring, what he did in other places, whether his computer
 19 was used for this purpose as opposed to that purpose. She
 20 has already testified at length about this.

21 And now their continuing effort to look at a
 22 laptop, there is -- the work that Dr. Martin did with respect
 23 to these articles is almost irrelevant. It is the fact that
 24 the articles were posted on the website, that is the claim in
 25 this case. They're claiming that it is a trade secret or a

1 | copyright violation. Either it's going to be or it's not
2 | going to be. Any materials that Dr. Martin might have on
3 | his -- on his laptop, even assuming that it were accessible
4 | and still there and the materials were there, has no
5 | conceivable relevance. It is simply another opportunity to
6 | prolong and complicate the case.

7 | MR. CROCKETT: I can -- I can respond to that
8 | easily.

9 | THE COURT: Okay.

10 | MR. CROCKETT: Mr. Skolnik takes the position that
11 | it wasn't Wellspring, the entity with money, that did the --
12 | the writing and the research; it was Paul Martin acting on
13 | his own that did it. So the reason why we were asking for
14 | this material is to show that, no, it was Paul Martin as the
15 | CEO or the president of Wellspring, he was doing it on
16 | Wellspring time and using resources. So they're -- we're
17 | expecting a motion for summary judgment where they'll say you
18 | can't prove that Paul Martin doing this was doing it for
19 | Wellspring, and we'll be able to -- we'd like to be able to
20 | say, well, no, he used Wellspring ass- -- resources. He used
21 | the Wellspring name. He did it on company time. He did it
22 | with a laptop issued by Wellspring, or he used a personal
23 | laptop for Wellspring business. I mean that's what -- that's
24 | where this is all going.

25 | MR. SKOLNIK: Your Honor, the testimony from Liz

1 Shaw, who was the person in the best position to know,
2 refutes every one of the statements that Mr. Crockett just
3 made.

4 MR. CROCKETT: But those are statements made by --

5 MR. SKOLNIK: So if the -- if the game now is to
6 continue to depose 20 new Wellspring employees to try to find
7 somebody who will contradict what Liz Shaw knows, I mean when
8 does this litigation end?

9 THE COURT: Well --

10 MR. SKOLNIK: -- what --

11 THE COURT: We'll get to that. But let's just
12 back -- go back to this issue, which is -- I mean
13 Mr. Bjornstat, as I understand it, was a 30(b)(6) witness.

14 MR. SKOLNIK: That's right.

15 THE COURT: Which means he needed to be prepared on
16 issues that were noticed in the -- I don't have any of this
17 before me, but issues that were noticed. If -- if one of the
18 issues was the -- the employees or the structure of
19 Wellspring, then he needed to inform himself about it. I
20 don't know whether he did or not. But you have an
21 obligation, I think, to update your discovery responses and,
22 for example, if he said there was one employee, and someone
23 said there were three employees, I mean, if you have
24 something to update, you should update it.

25 As to Liz Shaw, I got a call about Liz Shaw from

1 the deposition, and I made what I thought was a provisional
2 ruling at the time that required the identification of
3 employees who were associated with Dr. Martin and who have
4 knowledge, that they'd have to be identified by name and
5 others did not. That was my provisional ruling, and I'm
6 going to stick with it. But I don't -- I mean I'm not
7 sure -- I'm not sure how you even get to the next issue.

8 MR. CROCKETT: Well, we -- we've asked that -- we
9 need to be able to bridge the gap between Wellspring and
10 Dr. Martin so that when they bring their summary judgment
11 motion, they can't say, well, he was acting on his own behalf
12 when we have Dr. Bjornstat saying he was an eyewitness, he
13 said "I saw him with his laptop making notes in board
14 meetings. I was the board chairman. I saw that happen."
15 So -- so he's making notes of Wellspring activity with his
16 personal laptop, and we're just asking that the laptop be
17 examined.

18 THE COURT: I don't know about -- who has the
19 laptop?

20 MR. CROCKETT: The wife.

21 THE COURT: Yeah? And what's -- does she have a
22 position on this or ...

23 MR. CROCKETT: Yes.

24 THE COURT: Personal laptop? And this is
25 electronic discovery and -- I'd also -- why is this happening

1 seven years into the case?

2 MR. SKOLNIK: Well, that's a very good question.

3 THE COURT: That's another issue. But -- so
4 what -- what would be -- I mean, I don't know. I mean, is
5 someone opposing this? I mean, is she opposing it? Who
6 would do this? Who would pay for it? What's involved? You
7 know, it seems like --

8 MR. CROCKETT: He --

9 THE COURT: -- who would I order to produce the
10 laptop? He didn't -- he's dead.

11 MR. CROCKETT: Well --

12 THE COURT: -- Mr. --

13 MR. SKOLNIK: And -- and, Your Honor, let -- let me
14 ask this hypothetical question.

15 THE COURT: I don't know that I could compel her.

16 MR. SKOLNIK: Mr. -- Mr. Crockett is -- is
17 speculating that there are notes taken at a board meeting on
18 this laptop --

19 MR. CROCKETT: No, I'm not.

20 MR. SKOLNIK: -- based upon -- based upon Dr. --
21 Mr. Bjornstat's testimony. What could a note taken at a
22 board meeting say that is relevant to a decision about
23 whether these articles do or do not violate trade secret law
24 and are or are not copyright violations? What note of a
25 discussion at a board meeting could shed light on that?

1 THE COURT: I think he's saying that -- I'm not --
2 you can say -- his own thing, but I think he was saying that
3 it's not that, but that he expects a summary judgment motion
4 from you saying that Wellspring didn't do anything, that
5 Mr. Martin was acting -- or Dr. Martin was acting on his own.
6 So I guess that -- isn't that the issue that we heard
7 being -- I've never heard it before --

8 MR. SKOLNIK: My summary judgment motion is going
9 to be saying that there was no violation of trade secret law
10 here by anyone, and there was no copyright infringement by
11 anyone.

12 THE COURT: Are you going to take the position that
13 Mr. -- Dr. Martin was a -- that Wellspring had nothing to do
14 with this or not? I mean maybe that just resolves the issue
15 right here and then.

16 MR. CROCKETT: I'll withdraw my request if that's
17 the case.

18 THE COURT: Yeah.

19 MR. SKOLNIK: Well, I'm not quite sure of what
20 exactly the question is or what it is that Mr. Crockett is
21 concerned that I would be saying.

22 MR. CROCKETT: Well, it's pretty clear what he's
23 been saying so far, and that is that it's Paul Martin of his
24 own -- the asset-less Paul Martin on his own that was doing
25 this and not Wellspring, the entity with assets.

1 So if he's -- if he's willing to say that he's not
2 going to make -- he's not going to assert that at trial or a
3 motion for summary judgment, that there's a distinction
4 between two, then we'll --

5 (Interruption in proceedings at 11:47 a.m.)

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